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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California	Rulemaking 20-09-001 (Filed September 10, 2020)

OPENING BRIEF OF NEXT CENTURY CITIES TO ORDER INSTITUTING RULEMAKING 20-09-001

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I. INTRODUCTION

NCC respectfully submits these comments in response to the California Public Utilities Commission's ("CPUC" or "Commission") request for comment on a proposal to include fiber in facilities restoration following natural disasters and a query into how the one million dollars in the Digital Divide Account should be used to support California students.[1]

In August 2020, Governor Gavin Newsom directed the CPUC to take actions targeted at expanding broadband to all residents in California.[2] Notably, Governor Newsom's Executive Order states that "local and tribal governments play a critical role in understanding the broadband needs of their communities and in infrastructure planning and permitting."[3] Local and Tribal governments have experience in implementing the policies the Commission is considering in this proceeding. By consulting with local leaders, the Commission can draw on their expertise to inform policy decisions that deeply affect local communities and ensure that every resident across the state can access broadband's vital services.

II. THE CPUC SHOULD CAPITALIZE ON REBUILDS FOR EFFICIENTLY AND QUICKLY INSTALLING RESILIENT AND RELIABLE BROADBAND INFRASTRUCTURE.

Among a long list of action items drafted to spur broadband deployment and improve adoption, Governor Newsom requests that "in collaboration with CDT and other relevant agencies...[the Commission] seek opportunities to use programs under its jurisdiction to accelerate broadband deployment and to leverage utility infrastructure to increase access to existing fiber and cost-effectively deploy new fiber."[4]

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[1] California Public Utilities Commission, *Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California*, Assigned Commissioner's Scoping Memo and Ruling, Rulemaking 20-09-001 (Dec. 28, 2020), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M356/K561/356561545.PDF (Assigned Commissioner's Scoping Memo and Ruling).

[2] Governor Gavin Newsom, Executive Order N-73-20 (Aug. 14, 2020), https://www.gov.ca.gov/wp-content/uploads/2020/08/8.14.20-EO-N-73-20.pdf.

[3] Executive Order N-73-20, at 1.

[4] *Id*., 3.

In investigating this request, the Commission asks commenters, "What requirements, if any, should the Commission impose on communications service providers and the California energy Investor-Owned Utilities (IOUs) to facilitate the construction of fiber facilities or other technologies capable of providing a minimum download speed of 100 Mbps when restoring facilities after a disaster such as a fire?"[5] Relatedly, the Commission offers a staff proposal for comment, detailing a pilot program which would require IOUs to install fiber when rebuilding facilities following a fire or natural disaster.[6]

In the past year, local leaders in California saw firsthand the importance of resiliency and thoughtful disaster planning practices. By working in collaboration with local governments to expand opportunities for efficient deployment of high-quality broadband infrastructure, the CPUC can work toward Governor Newsom's speed goal of 100 Mbps downstream while capitalizing on existing projects. Rebuilding critical infrastructure after a wildfire or other natural disaster introduces a natural opportunity to include resiliency and improved services early enough in the planning process to reduce deployment costs and enable investment in high-quality infrastructure.

A. The Commission's Proposed Pilot Program Takes Steps in the Right Direction.

The CPUC Staff's proposed pilot program takes several steps in the right direction. By including dig once policies and rebuilding a more resilient infrastructure, broadband deployment costs can remain low while quality remains high. Dig once policies produce huge cost savings when implemented successfully.[7] Still, there are more opportunities for the Commission to spread these efficiencies more broadly.

One consideration missing from the Commission's proposal is whether it intends to include a plan for abandoned fiber and conduit. If infrastructure is left vacant by IOUs, control of the

[5] Assigned Commissioner's Scoping Memo and Ruling.
[6] California Public Utilities Commission, *Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California*, Administrative Law Judge's Ruling Serving Phase I Staff Proposal, Rulemaking 20-09-001 (Dec. 30, 2020), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M356/K574/356574789.PDF.
[7] *See generally* Diana Kruse, Policies and Ordinances that Facilitate Broadband Deployment (2018), https://edcgov.us/Government/CAO/Broadband/Documents/1.23.18%20Policies%20and%20Ordinances%20that%20Facilitate%20Broadband%20Deployment%20Report%20to%20Board.pdf.

abandoned facilities could return to the local government.[8] The Commission should develop a clear and easy to follow plan for maintaining information about the infrastructure laid using the pilot program so communities are not left with valuable untapped resources and unable to connect residents.

Part of successful deployment involves making network location available for last mile providers.[9] If fiber is installed but not accounted for in a meaningful way, providers who wish to connect will, at best, face increased exploratory costs and unnecessary delays. At worst, they will have to build their own infrastructure rather than tapping into existing assets, frustrating the purpose of installing the fiber in the first place.

Local governments across the state have successfully implemented dig once policies, which have led to widespread cost savings and improved service quality.[10] They have first-hand knowledge and expertise necessary to inform the Commission's decisions on the pilot program and ensure that the policies are implemented in the best possible way to ensure that even in the face of future disasters, broadband infrastructure remains reliable and keeps residents connected to essential healthcare and emergency services.

B. Dig Once Policies Are Both Efficient and Futureproof.

Dig once policies can help expedite deployment while decreasing costs. They also promote access to the fastest, most reliable and resilient, and lowest latency broadband technology on the market.[11] Considering that wireless solutions require access to fiber backhaul, investments in fiber can transform the connectivity options available to a community. Additionally, excess capacity from publicly owned fiber can be leased to wireline broadband providers who can build last mile service to residents' homes.

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[8] *See id*., 7-8.
[9] *See id*., 8.
[10] *See id*., 4-6.
[11] *See generally*, Bennett Cyphers, The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband (2019), https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband.

As Monterey County explains in its comment to the California Broadband Council,

> We should promote a state-wide "dig once" policy and encourage all local governments to adopt the policy as a local ordinance. The policy will significantly reduce the cost of building out internet access to underserved communities, and it will effectively eliminate the need to dig up recently paved roads to expand broadband infrastructure.[12]

C. Building Resiliency and Quality Into Design Is Crucial.

Resiliency plans must be introduced early enough into the process that they can have the most impact. In fact, the most effective resiliency plans are implemented before a natural disaster takes place. The Commission can provide local governments with tools and resources that improve resiliency, including by imposing obligations on IOUs.

To the extent that the Commission considers other technologies that can provide speeds of 100 Mbps, it should ensure that those speeds are available both upstream and downstream. Though Governor Newsom's Executive Order focuses on downstream speed, the large upstream capacity requirements of applications necessary for distance learning, telehealth, and remote work necessitate technologies capable of providing symmetrical speeds.

San Bernardino emphasized the importance of symmetrical speeds in its comment to the California Broadband Council, stating:

> In Governor Newsom's Executive Order N-73-20, it directs state agencies to pursue a minimum broadband speed goal of 100 megabits per second download speed. As the council prepares a roadmap towards achieving this goal, we request you to consider upload speeds as well as download speeds, and we would recommend pursuing a minimum upload speed of 100 megabits per second to match the EO's recommendation for download speed.[13]

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[12] *See* Monterey County Comments, *California Broadband Action Plan* (Nov. 19, 2020), https://broadbandcouncil.ca.gov/wp-content/uploads/sites/68/2020/11/monterey-county_11-19-20.pdf (Monterey County Comments).

[13] *See* San Bernardino County Comments, *California Broadband Action Plan*, 1 (Nov. 20, 2020), https://broadbandcouncil.ca.gov/wp-content/uploads/sites/68/2020/11/san-bernardino-county_11-20-20-.pdf.

The same is true for Commission actions, particularly as new applications necessary for fully engaging with work, school, and healthcare may bring even higher capacity demands.

III. TO EFFECTIVELY UTILIZE DIGITAL DIVIDE ACCOUNT FUNDS, THE COMMISSION SHOULD CONSULT WITH LOCAL OFFICIALS, AS WELL AS TEACHERS AND LIBRARIANS.

Following the COVID-19 outbreak, soul-stirring images of children completing schoolwork in a fast-food parking lot circulated.[14] The photo spurred a larger movement to raise awareness for inadequate broadband access. In response to these inequities, local governments have imposed a variety of solutions, from single-payer agreements to providing hotspots. At the same time, local officials are balancing revenue losses and staffing reductions while also meeting residents' needs while responding to uncontrollable forces.

A. The Magnitude of the Problem Far Exceeds the Funding Available.

The Federal Communications Commission ("FCC") estimates that nearly a million California residents do not have broadband access.[15] Still, the FCC's estimate does not capture many other Californians whose census blocks are reported served, but who cannot realistically get a connection to their home.[16] It is also worth noting that in areas with some of the most disconnected populations, as infrastructure is upgraded, network upgrades are not always equitable, which disproportionately impact residents living in areas where deployment is expensive.[17] For example, a report from Common Sense and Boston Consulting group estimates that over 2.5 million California students and teachers lack either an internet subscription, device,

[14] Jennifer Passmore, *Photo of Girls Doing Homework in Taco Bell Parking Lot Goes Viral* (Sept. 1, 2020), https://www.moms.com/photo-girls-doing-homework-taco-bell/.
[15] Federal Communications Commission, *Fixed Broadband Deployment Data from FCC Form 477*, https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477 (last visited Jan. 28, 2021).
[16] *See generally*, Gov't Accountability Office, Broadband Internet: FCC Data Overstate Access on Tribal Lands (2018), https://www.gao.gov/assets/700/694386.pdf.
[17] *See e.g.* Santa Clara County Comments, *California Broadband Action Plan* (Nov. 17, 2020), https://broadbandcouncil.ca.gov/wp-content/uploads/sites/68/2020/11/santa-clara-county-office-of-education_11-17-2020.pdf.

or both.[18] That statistic leaves California second in the nation for the highest population of students and teachers who lack an internet subscription or device.[19]

Notably, the roughly one million dollars in the Digital Divide Account is a small portion of the total cost of connecting every California student. In June 2020, California State Secretary of Public Instruction Tony Thurmond said it would cost $6 billion to connect all students.[20] Thurmond estimates that "out of California's 6.2 million students, more than 700,000 do not have a computing device at home. Additionally, more than 300,000 lack access to the internet."[21] In the first six months after the pandemic, Santa Clara County alone devoted $20 million to connecting students, while the statewide costs totaled $1 billion.[22] Santa Clara County's Superintendent Mary Ann Dewan aptly points out, those costs are unsustainably high and do not address underlying long-term problems such as affordability.[23]

B. Local Officials and Community Leaders Can Provide Critical Insights Into How the Funding Can Be Used Most Effectively.

Consulting with local leaders to determine how to use the funds in the Digital Divide Account is not only in-line with Governor Newsom's Executive Order, but a good practice to set in place for future proceedings. Local officials and community leaders are at the forefront of the digital divide, working with residents who are disconnected on an ongoing basis. The insights gained from beginning a local-state dialogue on this issue would help the CPUC reach the heart of the connectivity problems it wishes to address.

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[18] Tech Learning Editors, *Report: Over 2.5 Million California Students and Teachers Lack Adequate Internet Connection or Devices* (June 29, 2020), https://www.techlearning.com/news/report-over-25-million-california-students-and-teachers-lack-adequate-internet-connection-or-devices#:~:text=Approximately%2015%2D16%20million%20K,live%20in%20households%20with%20neither.

[19] *Id*.

[20] Press release, California Dep't of Education, State Superintendent Tony Thurmond Calls on Private Industry Partners to Support a $500 Million Initiative to Fund Computing Devices and Internet Access for All California Students (June 29, 2020), https://www.cde.ca.gov/nr/ne/yr20/yr20rel51.asp.

[21] *Id.*

[22] *See* Santa Clara County Comments, *California Broadband Action Plan* (Nov. 17, 2020), https://broadbandcouncil.ca.gov/wp-content/uploads/sites/68/2020/11/santa-clara-county-office-of-education_11-17-2020.pdf.

[23] *Id*.

In the words of Monterey County,

> Libraries and schools are already embedded in all communities including rural communities across California and are already working on these issues at a statewide level. The existing public library and school networks can serve as the network backbone for a state-wide broadband network.[24]

With thoughtful input from community leaders, the Commission's Digital Divide Account can be a seed for developing long-lasting, sustainable connectivity solutions. Teachers and librarians are often the frontline workers when it comes to providing support for students who do not have adequate connectivity or digital tools to participate in school, yet they are often excluded from problem-solving conversations about the needs that intimately affect their students and patrons. By collaborating with those who have a firsthand understanding of the ongoing challenges that students are facing, the Commission can better develop solutions that are responsive to the ongoing needs of disconnected residents.

As Monterey County District 1 Supervisor Luis A. Alejo, City of Los Angeles Councilmember Kevin de León, and 56th District State Assemblymember Eduardo Garcia wrote:

> It is estimated that 1.2 million students, or a whopping 20 percent of all students in California, do not have access to even the most basic Internet resources in their homes. This problem is especially pervasive in California's rural, low-income and communities of color.[25]

The magnitude of California's digital divide is enormous. Assuming that only 1.2 million students are on the wrong side of the digital divide, if current funding is allocated equally across all affected students, the funds in question would provide less than $1 per student. Adding disconnected educators and college students to the populations in need, the Digital Divide Account funds equate to less than $.50 per person. Thus, funds must be used as efficiently as possible to address a problem that will persist at least as long as social distancing measures are in place.

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[24] Monterey County Comments, 2-3.

[25] Luis A. Alejo, Kevin de León, Eduardo Garcia, *California Needs a Universal Broadband Infrastructure for Our Students* (Aug. 5, 2020), https://medium.com/@VoteAlejo/california-needs-a-universal-broadband-infrastructure-bond-for-our-students-5ff72ad1a462.

While local officials from counties and school districts across the state filed comments on the California Broadband Council's action plan, that same level of engagement does not exist between municipalities and the CPUC in this proceeding.[26] By affirmatively reaching out to and collaborating with local officials, the Commission can better understand where to target one million dollars in digital divide funds and should pursue opportunities to open an ongoing dialogue that can inform other policy decisions.

IV. CONCLUSION

As the COVID-19 pandemic continues, reliable and affordable home broadband access for every resident remains of paramount importance. The Commission should actively seek input from local leaders to achieve that goal, especially those who have the insight and expertise to develop solutions for the issues identified for comment in this proceeding.

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[26] *See* California Broadband Council, *Broadband Action Plan*, https://broadbandcouncil.ca.gov/action-plan/ (last visited Jan. 27, 2021).